



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2012-0381; FRL-9709-7]

**Approval and Promulgation of Air Quality Implementation Plans;
Delaware; Requirements for Prevention of Significant Deterioration and Nonattainment
New Source Review; Fine Particulate Matter (PM_{2.5})**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware on March 14, 2012. This SIP revision pertaining to Delaware's Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs incorporates preconstruction permitting requirements for fine particulate matter (PM_{2.5}) into the Delaware SIP. In addition, EPA is proposing to approve SIP revisions and portions of SIP submissions for the purpose of determining that Delaware has met its statutory obligations with respect to the infrastructure requirements of the Clean Air Act (CAA) which relate to Delaware's PSD permitting program and are necessary to implement, maintain, and enforce the 1997 PM_{2.5} and ozone NAAQS, the 2006 PM_{2.5} NAAQS, and the 2008 lead NAAQS. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-**

2012-0381 by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: cox.kathleen@epa.gov.
- C. Mail: EPA-R03-OAR-2012-0381, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2012-0381**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814-2084, or by e-mail at duke.gerallyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On March 14, 2012, Delaware submitted a formal revision to the State Implementation Plan (SIP) (the March 2012 SIP submission). The SIP revision consists of amendments to 7 DE Admin. Code 1125, “Requirements for Preconstruction Review.” This SIP revision generally pertains to two Federal rulemaking actions regarding PM_{2.5}. The first is the “Implementation of the New Source Review (NSR) Program for Particulate Matter less than 2.5 Micrometers (PM_{2.5})” (NSR PM_{2.5} Rule),

which was promulgated on May 16, 2008 (73 FR 28321). The second is the “Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (PSD PM_{2.5} Rule), which was promulgated on October 20, 2010 (75 FR 64864).

Whenever a new or revised NAAQS is promulgated, section 110(a) of the CAA imposes obligations upon states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of the new or revised NAAQS within three years following the promulgation of such NAAQS - the “Infrastructure SIP” revisions. Although states typically have met many of the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous particulate matter (PM) standards, states (including all the EPA Region III states) were still required to submit SIP revisions that address section 110(a)(2) for the 1997 and 2006 PM_{2.5} NAAQS. In addition to the March 2012 SIP submission, Delaware has previously submitted SIP revisions addressing requirements set forth in CAA section 110(a)(2) for the 1997 and 2006 PM_{2.5} NAAQS, as well as the 1997 ozone and 2008 lead NAAQS. Because these SIP submissions addressed Delaware’s compliance with CAA section 110(a)(2), these SIP submissions are referred to as Infrastructure SIP submissions. These previous submittals, as well as a technical support document (TSD), are included in the docket for today’s action. The TSD contains a detailed discussion of these submittals and their relationship to the requirements of CAA section 110(a)(2).

A. Fine Particulate Matter and the NAAQS

On July 18, 1997, EPA revised the NAAQS for PM to add new standards for fine particles, using PM_{2.5} as the indicator. Previously, EPA used PM₁₀ (inhalable particles smaller than or equal to

10 micrometers in diameter) as the indicator for the PM NAAQS. EPA established health-based (primary) annual and 24-hour standards for PM_{2.5}, setting an annual standard at a level of 15 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and a 24-hour standard at a level of 65 $\mu\text{g}/\text{m}^3$ (62 FR 38652). At the time the 1997 primary standards were established, EPA also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM_{2.5}, such as visibility impairment, soiling, and materials damage. On October 17, 2006, EPA revised the primary and secondary NAAQS for PM_{2.5}. In that rulemaking, EPA reduced the 24-hour NAAQS for PM_{2.5} to 35 $\mu\text{g}/\text{m}^3$ and retained the existing annual PM_{2.5} NAAQS of 15 $\mu\text{g}/\text{m}^3$ (71 FR 61236).

B. Implementation of NSR Requirements for PM_{2.5}— the NSR PM_{2.5} Rule

On May 16, 2008, EPA finalized the NSR PM_{2.5} Rule to implement the 1997 PM_{2.5} NAAQS, including changes to the NSR program (73 FR 28321). The 2008 NSR PM_{2.5} Rule revised the NSR program requirements to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment and nonattainment areas. The 2008 NSR PM_{2.5} Rule also established the following NSR requirements to implement the PM_{2.5} NAAQS: (1) require NSR permits to address directly emitted PM_{2.5} and precursor pollutants; (2) establish significant emission rates for direct PM_{2.5} and precursor pollutants (including sulfur dioxide (SO₂) and oxides of nitrogen (NO_x); (3) establish PM_{2.5} emission offsets; and (4) require states to account for gases that condense to form particles (condensables) in PM_{2.5} emission limits.

Additionally, the 2008 final rule authorized states to adopt provisions in their nonattainment NSR rules that would allow major stationary sources and major modifications which will be located or take place in areas designated nonattainment for PM_{2.5} to offset emissions increases

of direct PM_{2.5} emissions or PM_{2.5} precursors with reductions of either direct PM_{2.5} emissions or PM_{2.5} precursors in accordance with offset ratios contained in the approved SIP for the applicable nonattainment area. The inclusion, in whole or in part, of the interpollutant offset provisions for PM_{2.5} is discretionary on the part of the states. In the preamble to the 2008 final rule, EPA included preferred or presumptive offset ratios, applicable to specific PM_{2.5} precursors that states may adopt in conjunction with the new interpollutant offset provisions for PM_{2.5} and for which the state could rely on the EPA's technical work to demonstrate the adequacy of the ratios for use in any PM_{2.5} non attainment area. Alternatively, the preamble indicated that states may adopt their own ratios, subject to the EPA's approval, that would have to be substantiated by modeling or other technical demonstrations of the net air quality benefit for ambient PM_{2.5} concentrations.

The preferred ratios were subsequently the subject of a petition for reconsideration which the Administrator granted. EPA continues to support the basic policy that sources may offset increases in emissions of direct PM_{2.5} or of any PM_{2.5} precursor in a PM_{2.5} nonattainment area with actual emissions reductions in direct PM_{2.5} or PM_{2.5} precursors in accordance with offset ratios as approved in the SIP for the applicable nonattainment area. However, we no longer consider the preferred ratios set forth in the preamble to the 2008 final rule for PM_{2.5} NSR implementation to be presumptively approvable. Instead, any ratio involving PM_{2.5} precursors adopted by the state for use in the interpollutant offset program for PM_{2.5} nonattainment areas must be accompanied by a technical demonstration that shows the net air quality benefits of such ratio for the PM_{2.5} nonattainment area in which it will be applied.

C. PSD PM_{2.5} Rule

On October 20, 2010 (75 FR 64865), EPA promulgated the final “Prevention of Significant Deterioration (PSD) for Particulate Matter less than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)” (PSD PM_{2.5} Rule). That rulemaking finalized certain program provisions under the regulations to prevent significant deterioration of air quality due to emissions of PM_{2.5} (*i.e.*, under the PM_{2.5} PSD regulations). This final rule supplemented the final implementation rule for PM_{2.5}, known as the Clean Air Fine Particle Implementation Rule (CAFPIR) that we promulgated on April 25, 2007 (72 FR 20586), and the PM_{2.5} NSR Implementation Rule that we promulgated on May 16, 2008 (73 FR 28321). Together, these three rules establish a regulatory framework for implementation of a PM_{2.5} program in any area. This final rule established increments, SILs, and an SMC for PM_{2.5} to facilitate ambient air quality monitoring and modeling under the PSD regulations for areas designated attainment or unclassifiable for PM_{2.5}.

D. Infrastructure Requirements Relating to Delaware’s PSD Permit Program

With the addition of the PM_{2.5} requirements described above, Delaware’s nonattainment NSR and PSD programs contain all of the emission limitations and control measures and other program elements required by 40 CFR 51.165 and 40 CFR 51.166 related to the PM_{2.5} NAAQS. Therefore, we also are proposing to approve the March 2012 SIP submittal and the relevant portions of Delaware’s Infrastructure SIP submittals relating to the PSD permit program requirements under CAA sections 110(a)(2)(D)(i)(II) for the 1997 ozone and PM_{2.5} NAAQS, the 2006 PM_{2.5} NAAQS, and the 2008 lead NAAQS. EPA also is proposing to approve the relevant portion of Delaware’s submittal relating to the PSD permit program pursuant to CAA section

110(a)(2)(C) and (J) for the 2008 lead NAAQS. As already noted, the TSD for this action contains a detailed discussion of the relevant submissions and EPA's rationale for making this determination.

II. Summary of SIP Revision

The March 2012 SIP revision submitted by Delaware consists of amendments to 7 DE Admin. Code 1125, Requirements for Preconstruction Review. The revision fulfills the federal program requirements established by the 2008 NSR PM_{2.5} Rule. The amendments establish the major source threshold, significant emission rate and offset ratios for PM_{2.5}, establish NO_x and SO₂ as precursors to PM_{2.5}, and establish the allowance for interpollutant trading for offsets and NSR applicability to PM_{2.5} precursor pollutants, pursuant to the May 2008 NSR PM_{2.5} Rule. In addition, the amendments add maximum allowable ambient pollutant concentrations (increments) and an SMC for PM_{2.5} pursuant to the October 2010 PSD PM_{2.5} Rule.

The amendments add definitions, in Section 1 (General Provisions), for the following terms: "major source baseline date," "condensable particulate matter," "direct PM_{2.5}," and "filterable PM." The amendments revise the definitions of existing terms "baseline area," "baseline concentration," "building, structure, facility or installation," "minor source baseline date," and "significant" to include the requirements for PM_{2.5} to support the amendments to Chapter 1125. Section 2.2.5 is added to Chapter 2.0, Emission Offset Provisions, to identify NO_x and SO₂ as precursors. Section 2.4.3.3 is added to allow emissions offsets of SO₂, NO_x or PM_{2.5} at a 1-to-1 ratio for the same criteria pollutants. Section 2.5.7 is added to Chapter 2.0 to allow interpollutant trading between direct PM_{2.5} emissions and SO₂ or NO_x emissions using a ratio that would be approved by Delaware after public review and comment and then approved by EPA as a SIP

revision. Section 3.2 in Chapter 3.0, Prevention of Significant Deterioration of Air Quality, is modified to establish increments for PM_{2.5}. Section 3.7 (Review of Major Stationary Sources and Major Modifications – Source Applicability and Exemptions) is revised at Section 3.7.7.1 to establish an SMC for PM_{2.5}. No other changes to increments or SMCs for other regulated NSR pollutants are being addressed in this SIP approval.

The amendments submitted in March 2012 by Delaware for approval into the SIP were adopted by Delaware on January 17, 2012 and became effective on February 11, 2012. Based upon EPA's review of the revisions submitted by Delaware for approval into the SIP, EPA finds these revisions to be consistent with their Federal counterparts.

The revisions submitted by the State of Delaware to address the new PSD requirements for PM_{2.5} pursuant to the EPA's October 20, 2010 final rule include the regulatory text at 40 CFR 51.166(k)(2), concerning the implementation of SILs for PM_{2.5}. (*See*, 7 DE Admin. Code 1125 Section 3.9 (Source Impact Analysis)). We stated in the preamble to the 2010 final rule that we do not consider the SILs to be a mandatory SIP element, but regard them as discretionary on the part of permitting authority for use in the PSD permitting process. Nevertheless, the PM_{2.5} SILs are currently the subject of litigation before the U.S. Court of Appeals (D.C. Circuit). In response to that litigation, the EPA has requested that the Court remand and vacate the regulatory text in the EPA's PSD regulations at paragraph (k)(2) of section 51.166 so that the EPA can make necessary rulemaking revisions to that text.

In light of EPA's request for remand and vacatur and our acknowledgement of the need to revise the regulatory text presently contained at paragraph (k)(2) of sections 51.166 and 52.21, we do not believe that it is appropriate at this time to approve that portion of the State's SIP revision

that contains the affected regulatory text in the State's PSD regulations, specifically new section 3.9 of 7 DE Admin. Code 1125. Instead, we are taking no action at this time with regard to that specific provision contained in the SIP revision.

III. Proposed Action

Based upon EPA's review of the March 14, 2012 submittal, EPA finds the revised regulations consistent with their Federal counterparts. Only the increment portion of the October 20, 2010 PM_{2.5} rule is a required PSD program element. Therefore, EPA is proposing to approve the Delaware SIP revision with the exception of the SILs as noted earlier, upon which we are taking no action. Additionally, in light of this SIP revision, EPA is proposing to approve the portions of Delaware's December 13, 2007, March 12, 2008, September 19, 2008, September 16, 2009, and April 1, 2010 infrastructure SIP submittals which address the obligations set forth at CAA section 110(a)(2)(D)(i)(II) relating to Delaware's PSD permit program for the 1997 PM_{2.5} and ozone NAAQS as well as for the 2006 PM_{2.5} NAAQS. Finally, in light of Delaware's submission dated October 17, 2011 and the March 2012 SIP revision which address the obligations set forth at CAA sections 110(a)(2)(C), (D)(i)(II) and (J) relating to the Delaware's PSD permit program, EPA is proposing to determine that Delaware's SIP meets the statutory obligations relating to its PSD permit program set forth at CAA sections 110(a)(2)(C), (D)(i)(II), and (J) for the 2008 lead NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule pertaining to NSR requirements for PM_{2.5} does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 et seq.

Dated: July 20, 2012

James W. Newsom,
Acting Regional Administrator,
Region III.

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